

Item SP06-17 Response Form

Title: Disqualification of Appellate Justices (amend Cal. Code Jud. Ethics, canon 3E(5)(h))

- ☐ Agree with proposed changes
- ☐ Agree with proposed changes **if modified**
- ☐ Do not agree with proposed changes

Comments: _____

Name: _____ Title: _____

(Please print)

Organization: _____

☐ Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Friday, September 1, 2006

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

Circulation for comment does not imply endorsement by the Supreme Court.

Title	Disqualification of Appellate Justices (amend Cal. Code Jud. Ethics, canon 3E(5)(h))
Summary	This proposed amendment tracks recent legislative amendments to Code of Civil Procedure section 170.1(a)(8), which, in certain circumstances, provides for disqualification of trial court judges who have an arrangement concerning prospective employment with an alternative dispute resolution (ADR) provider or have discussed such employment with an ADR provider. Canon 3E(5)(h) is the parallel provision for appellate justices.
Source	Supreme Court Advisory Committee on the Code of Judicial Ethics
Staff	Mark Jacobson, 415-865-7898, mark.jacobson@jud.ca.gov
Discussion	<p>Effective January 1, 2005, the Supreme Court adopted canon 3E(5)(h), which provides that an appellate justice who has a current arrangement concerning prospective employment as a private ADR provider or is participating in, or within the past two years has participated in, discussions about such prospective employment is disqualified under the following circumstances: (1) the arrangement is, or the discussion was, with a party to the proceeding; or (2) the matter before the justice includes issues relating to either the enforcement of an agreement to submit a dispute to ADR or the appointment or use of an ADR provider. The language of the canon tracked Code of Civil Procedure section 170.1(a)(8), which applies to trial court judges.</p> <p>The Legislature recently amended section 170.1(a)(8) to clarify the circumstances under which a judge is disqualified. One amendment defines “participating in discussions” to require that the judge indicate some interest in accepting or negotiating possible employment or service, rather than simply declining an unsolicited offer from an ADR provider. The amendments also provide that a judge who has a current arrangement for employment as an ADR neutral, or has been involved in negotiations with an ADR provider, is disqualified if he or she (1) directs the parties to participate in an ADR process in which the provider is an entity or individual with whom the judge has the arrangement or has had discussions, or (2) selects an ADR provider, and among those available for selection is the provider with whom the judge has the arrangement or has had discussions.</p> <p>The Supreme Court Advisory Committee on the Code of Judicial Ethics concluded there is no basis for applying different rules to</p>

appellate justices than to trial court judges in this area. Therefore, the committee has recommended that the court amend canon 3E(5)(h) so that the changes adopted by the Legislature for trial court judges would also apply to appellate court justices.

The text of the proposed amendments to canon 3E(5)(h) is attached.

Attachment

Canon 3E(5)(h) of the California Code of Judicial Ethics would be amended, effective January 1, 2007, to read:

CANON 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL
OFFICE IMPARTIALLY AND DILIGENTLY

A.–D. ***

E. Disqualification

(1)–(4) ***

(5) Disqualification of an appellate justice is also required in the following instances:

(a)–(g) ***

(h) The justice has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding ~~such~~ prospective employment or service as a dispute resolution neutral, or has been engaged in such employment or service, and either any of the following applies:

(i) The arrangement is, or the prior employment or discussion was, with a party to the proceeding;

(ii) The matter before the justice includes issues relating to the enforcement of either an agreement to submit a dispute to an alternative dispute resolution process or an award or other final decision by the ~~appointment or use of~~ a dispute resolution neutral;

(iii) The justice directs the parties to participate in an alternative dispute resolution process in which the dispute resolution neutral will be an individual or entity with whom the justice has the arrangement, has previously been employed or served, or is discussing or has discussed the employment or service; or

(iv) The justice will select a dispute resolution neutral or entity to conduct an alternative dispute resolution process in the matter before the justice, and among those available for selection is an individual or entity

1 with whom the justice has the arrangement, with whom the justice has
2 previously been employed or served, or with whom the justice is discussing
3 or has discussed the employment or service.
4

5 For purposes of this canon, “participating in discussions” or “has
6 participated in discussions” means that the justice solicited or otherwise
7 indicated an interest in accepting or negotiating possible employment or
8 service as an alternative dispute resolution neutral or responded to an
9 unsolicited statement regarding, or an offer of, such employment or service
10 by expressing an interest in that employment or service, making any inquiry
11 regarding the employment or service, or encouraging the person making the
12 statement or offer to provide additional information about that possible
13 employment or service. If a justice’s response to an unsolicited statement
14 regarding, a question about, or offer of, prospective employment or other
15 compensated service as a dispute resolution neutral is limited to responding
16 negatively, declining the offer, or declining to discuss such employment or
17 service, that response does not constitute participating in discussions.
18

19 For purposes of this ~~paragraph~~ canon, “party” includes the parent,
20 subsidiary, or other legal affiliate of any entity that is a party and is
21 involved in the transaction, contract, or facts that gave rise to the issues
22 subject to the proceeding.
23

24 For purposes of this canon, “dispute resolution neutral” means an arbitrator,
25 a mediator, a temporary judge appointed under section 21 of article VI of
26 the California Constitution, a referee appointed under Code of Civil
27 Procedure section 638 or 639, a special master, a neutral evaluator, a
28 settlement officer, or a settlement facilitator.